

***NAVIGATING THE DISPUTE
RESOLUTION PROCEDURES***
IN COLORADO'S DEVELOPMENTAL DISABILITIES SYSTEM

by
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**The Legal Center for People
with Disabilities and Older People**

Colorado's Protection & Advocacy System

The Legal Center is a Colorado nonprofit corporation that serves as Colorado's Protection and Advocacy System for Individuals with Developmental Disabilities, in accordance with 42 U.S.C. § 15001 et seq. The Legal Center's mission is to protect and promote the rights of people with disabilities and older people in Colorado through direct legal representation, advocacy, education and legislative analysis.

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Preface

Coloradans with developmental disabilities are experiencing significant change in the way their services and supports are funded and provided. Ideas regarding how best to provide services and supports are endlessly debated. In the midst of this change, people with developmental disabilities and their families are increasingly speaking up for themselves about what they want. They expect meaningful services and supports, so that they may live their lives as they determine, in the communities of their choice. This is a time of rising expectations and limited resources.

Today, people with developmental disabilities have more choice in the services they receive and in who provides those services. Inherent in the opportunities that choice offers, however, is the potential for conflict between those who receive services and those who provide them.

Although conflict is inevitable, it should not be ignored, discouraged, or feared. Successful conflict resolution often results in new perspectives and attitudes and can lead to needed changes in policy. But, successful dispute resolution does not just happen. It is the result of procedures that are intrinsically fair and understandable. It is the result of people having access to the information they need to use the procedures effectively and to exercise their options. Most importantly, successful conflict resolution is the result of people feeling free to use the procedures without fear of retaliation.

Disputes in the developmental disabilities system are resolved through a variety of different legal mechanisms. This handbook is an attempt to familiarize you with these procedures. Although the information provided is based upon current laws and practices in Colorado, it is not intended to be a substitute for the advice of an attorney or legal representation, when either is needed. Since laws and programs are subject to change, please remember that it is important to check to see if there have been any changes that would affect your particular circumstances.

Navigating the Dispute Resolution Procedures in Colorado's Developmental Disabilities System

I. Introduction

The Colorado General Assembly has long recognized the needs of Coloradans with developmental disabilities and has created a state system of services and supports to help meet those needs. The law, or statute, creating this system is called: "The Care and Treatment of the Developmentally Disabled." The law can be found at Colorado Revised Statutes, §§ 27-10.5-101 through 503.

Each year, the Colorado General Assembly funds the Colorado Department of Human Services, which in turn, contracts with twenty community centered boards across the state to provide community-based services and supports to individuals with developmental disabilities. In addition, the Colorado Department of Human Services provides some services directly to individuals with developmental disabilities, through three state-run regional centers. These regional centers are located in Wheat Ridge, Pueblo, and Grand Junction, Colorado.

Community centered boards are private corporations, either for profit or not for profit. Community centered boards, or "CCBs," as they are commonly referred to, are responsible for providing services within a specific geographic area. CCBs can provide services directly or contract with other individuals or service agencies to provide needed services. CCBs are the only agencies that are authorized by state law to determine whether or not someone is eligible for services and supports through the developmental disabilities system.

Our state law creating the developmental disabilities system requires that CCBs, regional centers, and program approved service agencies adopt procedures for resolving certain types of

disagreements or disputes between individuals with developmental disabilities and the CCBs and agencies that serve them. As the state agency responsible for overseeing the developmental disabilities system, the Colorado Department of Human Services, Developmental Disabilities Services, has adopted numerous rules and regulations regarding what these dispute procedures must contain.

The Department of Human Services has also issued rules providing for additional ways to resolve disputes in the developmental disabilities system, including the use of emergency orders, declaratory orders, and grievance procedures. Collectively, these rules are known as the "dispute resolution procedures." Officially, the rules can be found in the Code of Colorado Regulations, at 2 C.C.R. 503-1, Rule 16.320. Each CCB, regional center, and program approved service agency must follow these rules and make them available for your review.

This handbook was developed to help you better understand what types of disagreements or disputes are covered by the dispute resolution procedures and to explain how the different procedures work. As you will see, there are different ways to resolve disputes in the developmental disabilities system, depending upon the nature of the dispute. Whether you are a person receiving services, a family member, a case manager, an advocate, or a service provider, we hope that you will find the information in this handbook instructive.

II. The Importance of Your Individualized Plan

Since many disputes start as disagreements over what services and supports you should receive or how those services should be provided, it is important to understand the planning process that must come before any service or support is provided to you.

Once you are found eligible for services and supports by a CCB, a written plan listing the services and supports that will be provided to you must be developed within thirty (30) days. This plan is called an Individualized Plan or "IP." It is developed by a group of people called an interdisciplinary team, or "IDT." This team includes you, your parents if you are a minor (under the age of eighteen), your guardian and/or authorized representative if you have one, the person who coordinates the provision of your services and supports, and others as determined by your needs and preferences. Among other things, your IP must:

- Identify your unique strengths, abilities, preferences, desires and needs and/or your family's needs;
- Identify specific services and supports appropriate to meet those needs;
- Document decisions made by the IDT planning process;
- Document the authorized services and supports funded by the Colorado Department of Human Services and the date your services and supports will start;
- Describe the services and supports that will be provided to you in sufficient detail, so that service agencies have a clear understanding of

their expected responsibilities and performance; and

- Describe the results to be obtained from the provision of services and supports.

Your IP must be reviewed at least once a year, and more often, if necessary, to ensure that your IP accurately reflects your current needs and circumstances. This means that you can request an IP meeting any time you believe a review is necessary.

During your IP meetings, any decisions that are made regarding your services and supports should be written down on your IP. If you request a particular service at your IP meeting and you are told that it will not be provided to you, make sure that the person responsible for taking notes at the meeting documents your request for the service and the reason why the service was not agreed upon.

Your IP is a very important document. In most instances, a CCB, regional center, or service agency has an obligation to only provide the services that are listed on your IP. When a disagreement develops over the services and supports you need, your first step is to review your IP to see what it says about your services. As you will see, your right to contest decisions regarding your services is directly tied to your IP.

III. The Types of Decisions that Can be Disputed

Our state law requires that CCBs, regional centers, and program approved service agencies¹ adopt procedures for the resolution of certain kinds of disputes between you and your CCB, regional center, or program approved service agency. The law actually spells out the types of decisions that must be covered by these procedures. Because the law specifies what types of decisions may be disputed, you cannot use these procedures for just any kind of complaint. Your complaint must pertain to one of the decisions that is specifically covered by the procedures. Other complaints or disputes you may have with your CCB, regional center, or service agency will need to be resolved in other ways.

The law states that you have the right to contest or dispute the following types of decisions made by CCBs, regional centers, and program approved service agencies:

- A decision that you are not eligible for services and supports;
- A decision to provide, modify, reduce, or deny services or supports set forth in your IP;
- A decision to terminate, or end, your services or supports;

¹ "Program Approved Service Agency" means a developmental disabilities service agency or typical community services agency as defined in 2 C.C.R. 503-1, Rule 16.120, which has received program approval by the Colorado Department of Human Services. In this handbook, the terms "program approved service agency" and "service agency" are used interchangeably.

- A decision that you are no longer eligible for services and supports.

A. Eligibility Determinations

As mentioned earlier, the CCBs are the only agencies that have the authority to determine whether you are eligible for services and supports. In order to be eligible for services, you must have a developmental disability (or a developmental delay if you are less than five years of age), as those terms are defined by state law.

If your CCB determines that you do not have a developmental disability² (or a developmental delay) and, therefore, are ineligible for services, you can contest, or appeal, this decision using the dispute resolution procedures.

Example: John has autism and was found ineligible for services by his CCB because he has an IQ score of 80. As the definition of developmental disability includes other disabilities besides mental retardation, basing an eligibility determination upon an IQ score alone may be inappropriate. Since all ineligibility decisions are covered by the dispute resolution process, John could appeal the decision finding him ineligible.

² "Developmental disability" means a disability that is manifested before the person reaches twenty-two years of age, which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism, or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. C.R.S. §27-10.5-102 (11)(a).

B. Decisions to Provide, Modify, Reduce, or Deny Services Set Forth in Your IP

Your need for particular services and supports may vary over time. As your IP must be reviewed at least annually, it is likely that your services and supports will change over the course of your lifetime. Before decisions are made to provide, modify, reduce or deny services set forth in your IP, however, your CCB, regional center, or service agency must tell you what it intends to do, and give you the opportunity to disagree with its decisions.

Example: James is receiving supported living services ("SLS") in his own home. He uses a wheelchair. He has requested that some adaptations be made to his home, including his shower and toilet. His CCB has refused to help him with this request, stating that it is too expensive. The refusal to provide this service (environmental engineering) is a decision that James could appeal using the dispute resolution procedures.

Example: Mary lives in a host home and has been receiving transportation services to and from her day program by her service agency for several months. The service agency has recently decided (and her IDT agrees) that it is no longer appropriate for them to provide all of the transportation services, as she is capable of taking public transportation. The service agency has notified her that her transportation services will be modified or changed. She has the right to contest this decision using the dispute resolution procedures.

Example: Susan lives at home with her family and has been working on developing her skills to

better access the community. Her current IP provides her the services of personnel to accompany and support her in a variety of community settings for fifteen hours a week. At her annual IP meeting, it was proposed that these hours be reduced to ten hours a week. Not only does Susan not want her hours reduced, she was hoping that they would be increased. The proposed reduction in her services (day habilitation) is a decision that she has the right to appeal.

Example: Sheri is ten years old and lives with her family. The family receives family support services in accordance with their family support plan. Last year, the family received \$250 for respite services. This year, at the beginning of the planning meeting, Sheri's case manager told the family that only \$200 would be available for respite. Because this is a reduction in the services set forth in their family support plan, it is a decision that the family can appeal.

Example: Paul has lived in the same group home for the past five years. His general health has been slowly deteriorating, including his ability to speak. It is apparent that he needs a speech/language assessment. This issue came up at his last IP meeting six months ago. Although his IP identifies that an assessment is needed, no assessment has been scheduled. The failure to actually follow through with this service within a reasonable time could be viewed as a denial of that service and Paul could appeal. (Depending on the circumstances, this may also constitute neglect by Paul's service agency.)

C. Terminations from Services or Supports

On occasion, a CCB, regional center, or service agency may try to terminate you from a particular service or support or terminate your services and supports altogether. Regardless of the reason for terminating any service or support listed in your IP, you have the right to appeal that decision.

Example: Bill lives in his own apartment and receives Supported Living Services ("SLS"). During the last few months, his behavior in the community when he is not being supervised is allegedly putting himself and the community at risk. Last week, Bill got into a physical altercation with staff and the police were called. Bill was taken to the hospital and then transferred to a Mental Health Institute. Although Bill is ready for discharge from the Institute, his CCB has proposed the termination of his SLS services because staff believes he now needs a residential setting that can provide him twenty-four hour supervision and that they can no longer ensure his safety or the safety of the community. Further, the CCB claims it does not have the resources to serve him appropriately. Bill wants to continue living in his own apartment and receive the services and supports that are currently set forth in his IP. Bill has a right to appeal the decision to terminate his services.

Example: Tom has been receiving community integrated employment services for the past year. With the help of a job coach, Tom works in the stockroom at King Soopers. Tom's service agency believes that Tom no longer needs the assistance of his job coach and has requested an IP meeting to discuss the possibility of terminating

this service. If Tom believes that he still needs his job coach, he can appeal any decision made by his team to terminate this service.

D. Determinations that You are No Longer Eligible for Services

Generally, a developmental disability is a lifelong disability. Once a person is found eligible for services, it is uncommon for a person later to be found ineligible for services because he or she no longer has a developmental disability. New assessments or evaluations, however, may indicate that a person no longer has a developmental disability, thus making the person ineligible for services and supports. Only a CCB can make this determination. A decision that you are no longer eligible for services and supports can be appealed.

Example: Mark, who was identified as having a developmental delay at age two (and, as a result, is eligible for services), is reevaluated at age five to see if he has a developmental disability. Because the criteria for having a developmental disability is different from the criteria for having a developmental delay, Mark is now found no longer eligible for services and supports, as current assessments do not indicate he has a developmental disability. As the dispute resolution procedures cover a decision that a person is no longer eligible for services, Mark can appeal.

All of the above scenarios are examples of decisions by CCBs, regional centers, or service agencies that can be contested using the dispute resolution procedures for complaints between individuals receiving services and the agencies that serve them. Although you have the right to contest a decision, this does not mean that you will

win your appeal. The dispute resolution process does guarantee, however, that you will have the "opportunity to be heard." In other words, the dispute resolution process guarantees you the right to tell your side of the story and have a decision made regarding your dispute, before your CCB, regional center, or service agency can implement the contested decision.

IV. Notice

Before a CCB, regional center, or service agency can implement a decision that you have the right to dispute or contest, the CCB, regional center, or service agency must tell you, in writing, what it intends to do. For example, if a CCB determines that you are ineligible for services or it proposes to terminate your services, it must notify you in advance of taking such action.

The written notice must provide you with all the information you need to determine whether you want to contest or appeal the decision that has been proposed. By law, the notice must contain the following information:

- The proposed action;
- The reason or reasons for the action;
- The effective date of the action;
- The specific law, regulation, or policy supporting the action;
- The responsible agency with whom a protest of the action may be filed including the name and address of the director;
- The conflict resolution procedure, including deadlines, and procedures on accessing agency records;
- Information on availability of advocacy assistance, including referral to publicly funded legal services, and other publicly or privately funded advocacy organizations, including the protection and advocacy

system (The Legal Center for People with Disabilities and Older People); and

- An explanation of how the agency will continue to provide services to you, including a statement that your services will not be terminated during the appeal. The explanation must include a description of the services you currently receive.

This notice must be provided to you at least fifteen (15) days before the date the action is to be effective. Your right to be notified in advance is a very important right.

Sometimes, CCBs, regional centers, or service agencies do not notify individuals before services in their IPs are reduced or changed or denied. Other times, a notice is provided but it does not contain all of the information that it should. If your CCB, regional center, or service agency fails to provide you with adequate notice, you should immediately let the director of the agency know that his or her agency is not complying with the law and request a new notice. To protect your right to appeal, however, you may want to go ahead and file a complaint about the action, even if the notice is incomplete. Remember, in most circumstances, if you are already receiving services, your services should continue while your dispute is being resolved.

V. The Dispute Resolution Process for Complaints Between Individuals and Program Approved Service Agencies

If you have been notified by your CCB, regional center, or service agency that it intends to take an action that can be contested, and you disagree with that action, you have the right to "appeal."

Information about your CCB's, regional center's, or service agency's dispute resolution procedures should have been provided to you as part of the written notice, described earlier in this handbook. If you did not receive the dispute resolution procedures with your notice, you should contact your CCB, regional center, or service agency immediately and ask for a copy of the procedures. You may want to review your agency's procedures, to see if they comply with the requirements that are discussed below.

The Colorado Department of Human Services has written some very specific requirements into its rules and regulations regarding how this dispute resolution process should work.

The dispute resolution process starts when you file a "complaint" with the CCB, regional center, or service agency that is proposing the action you disagree with. You do not need to use any special form or document to file a complaint. If your CCB, regional center, or service agency does not have a complaint form for you to use, a sample complaint letter is provided for you in Appendix A of this handbook. If you need assistance in filing your complaint, your CCB, regional center, or service agency should help you. Your complaint should be in writing and your agency's procedures should tell you how to file the complaint. It is important to know that you may not be retaliated against because you have exercised your right to file a complaint or have participated in the dispute resolution process.

A. Informal Negotiation

Once your complaint is filed, the CCB, regional center, or service agency must provide you with the opportunity to resolve your complaint through an informal negotiation process. The Colorado Department of Human Services' rules and regulations require that a meeting be scheduled within fifteen (15) days of the receipt of your complaint. This step in the process, the informal negotiation process, may be waived only by mutual consent. This means that this step cannot be skipped, unless both you and your CCB, regional center, or service agency agree that it should be skipped.

B. Formal Appeal

If informal negotiation fails, the CCB, regional center, or service agency must then provide you the opportunity to present information and evidence in support of your position to an impartial decision maker. The rules do not prohibit the director of the CCB, regional center, or service agency from being the impartial decision maker. The director could only serve in this role, however, if he or she had not been directly involved in the specific decision at issue and could be impartial, or fair. If you believe that the person acting as the decision maker cannot be impartial, do not hesitate to ask the director to appoint or designate someone else to hear your appeal.

At this stage in the dispute resolution process, which is often referred to as the "formal appeal," Colorado Department of Human Services' rules require that the dispute resolution procedures of the CCB, regional center, or service agency provide for the following:

- Timely notification of the meeting (at least ten (10) days in advance) to all parties unless waived by the objecting parties;

- The opportunity to be represented by a lawyer, authorized representative or another individual; and the opportunity to respond to or question the opposing position;
- Recording of the proceeding or hearing;
- A written decision issued within fifteen (15) days of the meeting setting forth the reasons therefor; and
- Notification that if the dispute is not resolved, the objecting party may request that the Executive Director of the Colorado Department of Human Services (or designee) review the decision.

C. State Level Review

If you disagree with the decision of the impartial decision maker, you have the right to have the Executive Director of the Colorado Department of Human Services review the decision. Likewise, if the CCB, regional center, or service agency disagrees with the decision of the impartial decision maker (assuming the impartial decision maker was not the executive director of the CCB, regional center, or service agency), the CCB, regional center, or service agency may also request a state level review.

A request to the Executive Director of the Department of Human Services to review the outcome of your dispute must be submitted within fifteen (15) working days from the postmark of the written decision of the impartial decision maker. The request for review must contain a statement that describes the issues still in dispute and all the information or evidence you believe is relevant to the dispute.

The party that did not request the review then has fifteen (15) working days to respond to the request for review. The Executive Director of the Department of Human Services (or designee) must provide a de novo review (a review that starts over from the beginning) and make a decision within ten (10) working days of the submission of all relevant information. The Executive Director has the right to request additional information from you or the CCB, regional center, or service agency and may request oral argument or a hearing if she or he thinks it is necessary to render a decision. The Executive Director's decision becomes the final decision of the Colorado Department of Human Services.

D. Judicial Review

If you disagree with the final decision of the Colorado Department of Human Services, you can request that the decision be reviewed by a state district court. This is called a request for judicial review. Judicial review refers to the power of courts to review decisions of another department or level of government. To begin this action, you must file a complaint within thirty (30) days after the date the final agency decision of the Colorado Department of Human Services becomes effective.

E. Services Continue During the Dispute Resolution Process

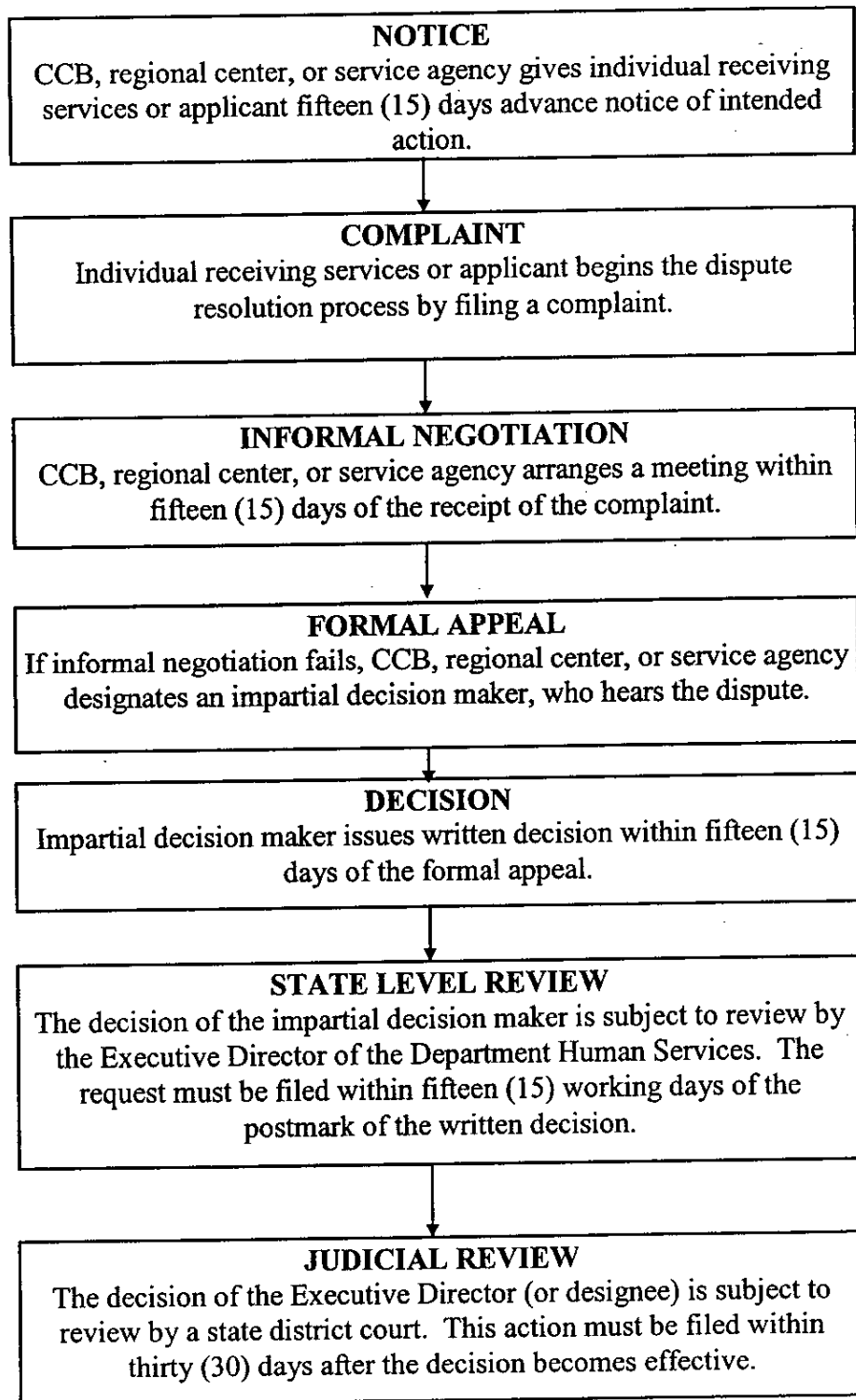
Any action or decision by a CCB, regional center, or service agency that is covered by the dispute resolution procedures cannot be implemented until after written notice of the intended action has been provided to you. You must also have been given the opportunity to use the dispute resolution process. Thus, you should continue to receive the same services you were receiving before the written notice, until your dispute is resolved. If you do not begin the dispute resolution process by filing a complaint, however, the CCB, regional center, or service agency may implement the decision after the notice period has expired.

It is also important to know that your CCB, regional center, or service agency cannot terminate your services or supports while you are using the dispute resolution process. The only exception to this rule is if the Colorado Department of Human Services determines that an emergency situation exists and orders some other arrangement regarding your services. The Colorado Department of Human Services has reserved the right to authorize suspension of services or supports pending the outcome of the dispute resolution process. In the event of an emergency, the Colorado Department of Human Services would enter an order regarding the CCB's, regional center's, or service agency's responsibility to provide you with alternative services during this time period.

Remember, only the Colorado Department of Human Services can declare that an emergency situation exists. In most situations, the Colorado Department of Human Services would not declare that an emergency exists, unless you or your CCB, regional center, or service agency asks them to do so.

Finally, it is possible, although unlikely, that during a dispute over an action other than the termination of your services, your CCB, regional center, or service agency may try to temporarily suspend you from services and supports. A suspension from services and supports can only be proposed, if you have demonstrated a serious physical threat to your health or safety or that of others and the suspension is necessary to protect your health or safety or that of others. Suspension may never be used to cause your termination from services and supports, or place you at risk of losing your home. As there are some very specific rules and regulations around suspensions from services and supports, we recommend that you contact The Legal Center for People with Disabilities and Older People for more information, if necessary.

F. Dispute Resolution Process Flowchart



VI. The Grievance Process

The dispute resolution process for complaints between individuals and program approved service agencies covers a number of very important decisions about your services and supports. There may be things that you would like to complain about, however, that are not covered by these specific procedures.

The Colorado Department of Human Services recognizes that you should have some way to complain to your CCB, regional center, or service agency about issues that are not covered by the dispute resolution process described earlier. Therefore, the rules of the Colorado Department of Human Services require that each CCB, regional center, and service agency develop procedures for the timely resolution of your complaints or "grievances."

The grievance process can be used by you, your parents, if you are a minor (under the age of eighteen), your guardian and/or your authorized representative, if appropriate.

A. Rules Regarding the Grievance Process

The Colorado Department of Human Services' rules do not put any limits on what can be grieved or complained about. The rules only state that each CCB, regional center, and service agency's grievance process must:

- Identify who within the CCB, regional center, or service agency will receive your grievance;
- Identify a support person to assist you in submitting your grievance;
- Set time lines for the resolution of your

grievance; and

- Require consideration by the CCB, regional center, or service agency director or designee if your grievance cannot be resolved at a lower level.

There is no special form or document needed to file a grievance. Your CCB, regional center, or service agency may have developed a form for you to use. If not, a sample grievance letter is provided for you in Appendix B of this handbook. If you need help in filing a grievance, your CCB, regional center, or service agency should assist you. You are entitled to a copy of your agency's grievance process.

Remember, the grievance process is a different process from the dispute resolution process for complaints between individuals and program approved service agencies. The dispute resolution procedures for complaints between individuals and agencies should be used for those contested decisions that are specifically covered by that process. Although the two procedures can often look alike up to a point, there is no right to have the Executive Director of the Colorado Department of Human Services review a decision made about your grievance. The grievance process ends when the CCB, regional center, or service agency director (or their designee) considers your grievance and makes a final decision about it.

Example: Shirley lives in a group home run by a service agency and is unhappy with the food choices that are provided at dinnertime. She has a right to file a grievance about this situation. Because she cannot read or write, the service agency has an obligation to help her submit her complaint to the proper person.

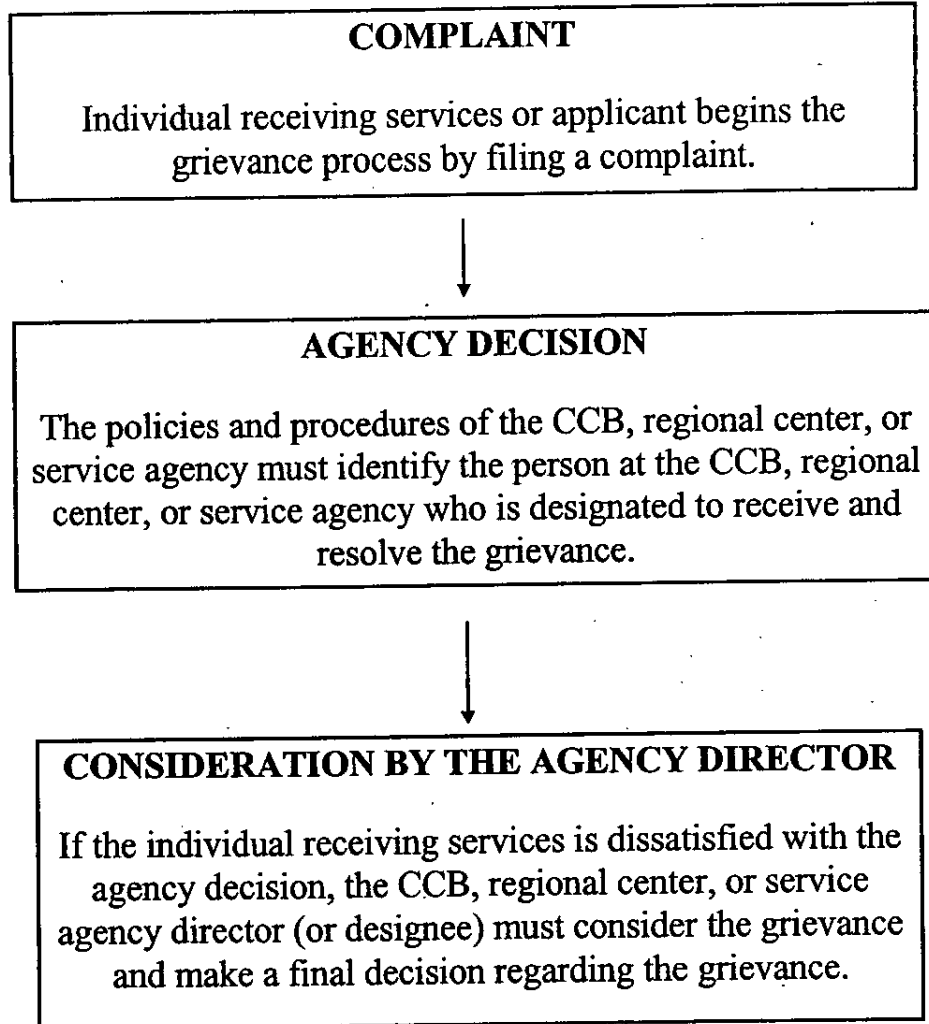
Example: Charles lives in a host home and wants

to go to a particular church on Sundays, but his host home provider is not willing to make the arrangements. Charles has a right to file a grievance over this issue and have his complaint addressed in a timely manner.

Example: Bob has been having trouble getting along with his case manager for the last six months. He feels like his case manager is not willing to listen to him any more and has ignored a number of his complaints. Although he has tried to talk to his case manager about his complaints, nothing has changed. Last month, Bob asked for a new case manager. No one has followed up on his request. Bob has a right to file a grievance over the regional center's lack of response to his request.

The right to file a grievance is an important right. If you use the grievance process, you should not be retaliated against for exercising your right to file a grievance or for participating in the grievance process. If you believe that you are being treated unfairly because you have filed a grievance, tell someone you trust who can help you complain about the retaliation. You can also call The Legal Center for People with Disabilities and Older People (or another advocacy organization of your choice) and ask for their help in resolving your situation.

B. Grievance Process Flow Chart



VII. Other Procedures for Resolving Disputes

As part of the dispute resolution procedures, the Department of Human Services has issued rules that provide for additional ways to resolve disputes. For example, if the situation is an emergency (as defined by the Department of Human Services), anyone may ask the Department of Human Services to make an emergency order. If it is unclear what the law requires in a certain situation, the Department can also "declare" what the law is, if someone requests the Department to do so.

If you and your CCB, regional center, or service agency are interested in trying to find your own solution to your dispute, you may now ask for mediation. Finally, you may have the right to ask for a Medicaid fair hearing, if your services and supports are funded through Medicaid. These options are all more thoroughly discussed below.

A. Emergency Proceedings

As mentioned earlier, your services and supports may not be terminated by your CCB, regional center, or service agency while you are using the dispute resolution process for complaints between individuals and program approved service agencies, unless the Department of Human Services issues an emergency order allowing it. There are other times, however, when you or some other person may be placed at risk of serious harm. This may be because of some action or behavior on your part or it may be the result of some action or inaction on the part of your CCB, regional center, or service agency.

In emergency situations, whether or not you are in the dispute resolution process, the Colorado Department of Human Services has reserved the authority to enter emergency orders, when necessary, to preserve your health, safety or welfare or that of the public. The Department of Human Services' rules and regulations describe the following situations as examples of when

an emergency order might be necessary:

- Situations that are ongoing or likely to recur if not promptly corrected or otherwise resolved and, likely to result in serious harm to the individual or others; or,
- Situations that arise out of a service provider's discontinuance of operation generally, or discontinuance of services to a particular individual because the service agency cannot ensure that person's safety or the safety of others.

If you are the one requesting an emergency order, it is up to you to provide all relevant documentation to the Colorado Department of Human Services. It is important for you to tell the Department of Human Services how you would like to see the emergency situation resolved. Then the CCB, regional center, or service agency has the opportunity to respond to your request for an emergency order. The Colorado Department of Human Services has the right to request additional information as needed and determines the time frames for the submission of information.

In addition to ruling on your request for an emergency order, the Colorado Department of Human Services may review the main issues involved in the dispute and determine the required course of action. If you are in an emergency situation, you can call The Legal Center for People with Disabilities and Older People for help.

B. Declaratory Orders

As part of the dispute resolution procedures, the Colorado Department of Human Services has issued rules allowing individuals to petition the Executive Director of the Department of

Human Services for declaratory relief. This procedure is properly used when parties disagree about what their rights and duties are under the "Care and Treatment of the Developmentally Disabled Act." The petition is a request to have the law declared, or interpreted, under the circumstances presented. The use of a petition for declaratory relief can relieve uncertainty or doubts about what the law requires in a given situation. Generally, there must be a real controversy or dispute (as opposed to a hypothetical situation or problem), before a petition for declaratory relief is appropriate.

Any petition, or request, for a declaratory order must include the following:

- Your name and address as the petitioner (the person requesting the order);
- The statute, rule or order involved in the dispute;
- A short statement of all of the facts necessary to show the nature of the controversy or uncertainty; and,
- The names of all persons or agencies (parties) directly involved in the dispute, as known to the petitioner.

If the Executive Director of the Department of Human Services decides to rule on the petition, he or she must notify all parties about the petition and provide them an opportunity to respond to the petition.

The Executive Director may rule on the petition based solely on the facts presented in the petition and any responses. Or, the Executive Director may request the petitioner or any involved

party to submit additional information. The Executive Director may make a decision regarding the petition without a hearing or may set the petition for hearing to obtain additional facts or information. The ruling of the Executive Director is binding upon all parties to the matter and is subject to judicial review.

C. Mediation

A new option for resolving disputes and complaints in the developmental disabilities system now exists. It is called "mediation." Mediation is a process involving the use of an independent, neutral third party, a mediator, who listens to a dispute and assists the parties in reaching a voluntary agreement.

Mediators are trained to help people work through their disagreements and find creative solutions to their problems.

Mediation is very different from the dispute resolution process described earlier in this handbook. Mediators are not decision-makers. They do not take sides and do not make any decisions regarding your dispute. The mediator's role is to facilitate a process that is fair and that results in the disputing parties voluntarily arriving at their own solution to the problem, if possible.

If the parties reach an agreement to their dispute, the mediator will write down what the parties have agreed to, and each party will be asked to sign the agreement and to follow through on what they have agreed to do. If an agreement is not reached, the parties are free to use any of the other dispute resolution procedures that are available and appropriate. Anything said or done during the mediation process should be kept confidential.

Many disagreements are suitable for mediation. If you believe that you are not receiving needed services or receiving services that are not right for you or are of poor quality, mediation may be worth trying. The only issue that may not be

mediated is a dispute over eligibility for services.

One unique feature of the developmental disabilities mediation project is the availability of a "support person" to assist you. The support person's role is to represent your interests, as the person receiving services. You can ask anyone you want to be your support person, such as a family member, friend, advocate or anyone else, so long as that person agrees to serve in the support person role. If you do not know anyone that could be your support person, your CCB or regional center must help you find someone.

The support person does not make decisions for you, anymore than the mediator does. As stated in Developmental Disabilities Services' training manual on the Mediation Pilot Program, "the overriding responsibility of the support person is to help the consumer pursue what the consumer wants in a manner that the consumer wants. A support person should not try to impose his or her opinions or decisions on the consumer." In essence, the support person is there for you to ensure that your voice is heard and to help balance negotiating power between you and your CCB, regional center, or service agency.

Each CCB is required to designate someone to be the CCB Liaison for the mediation project. This person is the point person at the CCB who knows about the mediation process and how it works. If you would like more information about mediation, contact your CCB and ask for the CCB Liaison for the mediation project. Currently, mediation is available at no cost to you or your family.

D. Medicaid Fair Hearings

Many individuals receiving services through the developmental disabilities system in Colorado also receive Medicaid. In fact, most of the services provided in our developmental disabilities system are funded, in part, through

Medicaid, primarily through Medicaid waivers.

When a state applies to the federal government for a Medicaid waiver, it is asking the federal government to "waive" certain federal Medicaid rules that generally apply to a state's Medicaid program. Waivers provide a state with more flexibility in terms of how it provides Medicaid services to certain groups of people. In other words, waivers allow states to try new or different approaches in the way they provide Medicaid services, as long as the services are still provided in an efficient and cost-effective manner.

A waiver under section 1915(c) of the Social Security Act allows a state to include as "medical assistance" under its Medicaid plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for individuals with mental retardation ("ICF/MR").

In Colorado, for individuals eighteen and older, there are two Medicaid waivers that are specifically designed to provide services to individuals with developmental disabilities. The first one is called the Supported Living Services Waiver, or "SLS Waiver." The second one is called the Home and Community-Based Services for the Developmentally Disabled Waiver, or the "HCBS-DD Waiver." There are a number of Medicaid waivers specifically designed for children with developmental disabilities or delays, as well.

If your services and supports are provided to you under one of the Medicaid waiver programs, you are a Medicaid recipient of those services and have some additional rights regarding your services. Thus, it is important to learn how the services and supports listed in your IP are funded, or paid for.

As a Medicaid recipient, you have the right to a fair hearing

if you disagree with certain actions that are taken regarding your Medicaid services. Your right to a Medicaid fair hearing is required by federal and state law and is separate and distinct from your right to use the dispute resolution procedures described earlier in this handbook.

Under federal and state Medicaid law, you must have the opportunity for a fair hearing before an independent State Administrative Law Judge, if:

- Your claim for Medicaid services is denied or is not acted upon with reasonable promptness; or
- You believe that an action taken regarding your Medicaid services is erroneous, or wrong. An "action" means a termination, suspension, or reduction of Medicaid eligibility or covered services.

The Colorado Department of Health Care Policy and Financing is the state agency responsible for the Medicaid program in Colorado. In addition to the right to a fair hearing described above, the Colorado Department of Health Care Policy and Financing has assured the federal government that it will provide you the opportunity for a fair hearing if you are not given the choice of home or community-based services as an alternative to institutional care or are denied the service(s) of your choice or the provider(s) of your choice.

Finally, federal Medicaid law provides that prior to any terminations, suspensions or reductions in your Medicaid waiver services, you are entitled to a written notice that explains the intended action and the reasons for the action. In most circumstances, the notice must be provided to you at least ten (10) days before the date of the action. The notice must also explain your right to a fair hearing and how that works. As you can see, the contents of this notice are similar to the contents of the notice that must be provided to you as part of the dispute

resolution process for complaints between individuals and agencies.

If you have any questions about your rights as a Medicaid recipient, you can contact The Legal Center for People with Disabilities and Older People for further information and assistance. You may also contact your local Colorado Legal Services office if you qualify for low income legal services.

VIII. The Role of Human Rights Committees

Although Human Rights Committees do not play a direct role in the dispute resolution process, they do have authority to review and monitor many important decisions that are made concerning your services and supports. Human Rights Committees, or "HRCs," act as advisory bodies to CCBs, regional centers, and often make recommendations regarding the decisions they review.

The Colorado General Assembly created HRCs to protect the legal rights of individuals receiving services and supports through the developmental disabilities system. This is the primary role of the HRC. HRCs protect your legal rights by ensuring that:

- Your informed consent is obtained when it is required;
- Suspension of your rights occurs only in accordance with the rules of the Colorado Department of Human Services and that continued suspensions of your rights are reviewed by your IDT not less than every six months;
- Behavior development programs, which incorporate restrictive procedures, are only used in accordance with the rules of the Colorado Department of Human Services;
- The use of psychotropic medications and other medications are used for the right purpose and in accordance

with all state rules; and

- Allegations of mistreatment, abuse, neglect and exploitation are investigated and the investigation report reviewed.

A review by the HRC does not take the place of the grievance process or other dispute resolution procedures. It is a separate process that has been developed to protect your legal rights. If the HRC is reviewing your situation, it is important to let the HRC members know if you have any complaints or concerns about your rights. That way, the HRC can conduct a review that includes your input.

Colorado Department of Human Services' rules specifically require that if your rights are suspended, the review of your rights suspension by the HRC must include an opportunity for you, your parent if you are a minor, and your guardian or authorized representative, to present, in person, relevant information to the HRC. If you disagree with a suspension of your rights, do not hesitate to tell the members of the HRC how you feel, so that they can consider your position in the course of their review.

IX. The Role of Developmental Disabilities Services Within the Colorado Department of Human Services

Developmental Disabilities Services ("DDS") is responsible for reviewing and monitoring the services and supports that are provided to individuals with developmental disabilities through the CCB system. As part of its obligation to monitor the quality of services, DDS conducts on-site inspections of residential programs and supported living services programs every two years and adult day programs every three years. These inspections, also called surveys, are part of DDS's effort to ensure that individuals receiving services and supports have access to quality care.

The primary purpose of a survey is to determine compliance with regulatory requirements and to provide a basis for decisions concerning on-going program approval. But the survey process also provides you the opportunity to share your thoughts, complaints or concerns about a particular CCB or service agency, with DDS.

A. The Survey Process

Every six months, DDS publishes a list of the CCB/service agencies and programs that are scheduled for inspection in the coming six months. If you have information you would like DDS to consider about an agency or program prior to a survey, you can call DDS and let them know what your concerns are. This will allow DDS the opportunity to pay closer attention to the area of your concerns during the survey process.

As a person receiving services (or as a family member of a person receiving services), you may be asked to participate in the survey process. Individuals receiving services should be part of the survey process because they know a great deal about their programs and how well their needs are being met. You should feel free to discuss your experiences, including any problems you

have had, with the surveyors.

In addition to the surveys described above, some parts of the regional centers, such as "Kipling Village," are licensed as ICF-MRs. As a result, these facilities are surveyed by the Colorado Department of Public Health and Environment, in order to ensure compliance with federal law.

B. Agency Surveys are Public Documents

You have a right to see a copy of any final survey report and learn what the CCB, regional center, or service agency plans to do to correct any problems that may have been identified through the survey process. Continued non-compliance by a CCB or service agency can lead to withdrawal of the CCB's or service agency's approval to do business in the developmental disabilities system.

X. Conclusion

Given the complexities of the developmental disabilities service delivery system, it is no wonder that conflict arises between the people who receive services (and their families) and the people who provide services. As many individuals with developmental disabilities are still not living the lives they envision, conflict is often the result.

When conflicts between individuals and agencies develop and are not adequately dealt with, long term relationships are sometimes strained beyond repair. Without the benefit of successful conflict resolution, the health of all those involved in the dispute is often compromised.

Fortunately, there are many ways to resolve conflicts in the developmental disabilities system. When and if you become involved in a dispute, we urge you to study the options that are available for conflict resolution and, if appropriate, pursue one. If you have questions about any of the dispute resolution procedures, do not hesitate to contact The Legal Center for People with Disabilities and Older People for further information and assistance.

Appendix A: Sample Complaint Letter

**Your Name
Address
City, State Zip**

Date

**Name of Person at CCB, Regional Center, or Service Agency
Designated to Receive Complaints**

**Name of CCB, Regional Center, or Service Agency
Address
City, State Zip**

Dear _____:

Please consider this letter a complaint, in accordance with Developmental Disabilities Services' rules and regulations, found at 2 C.C.R. 503-1, Rule 16.322.

I am filing this complaint because I disagree with the [Name of CCB, Regional Center, or Service Agency's] decision dated _____, which [describe decision in dispute]. I have enclosed a copy of the notice I received regarding this decision.

I understand that a meeting must be scheduled within fifteen days after you receive my complaint. Please let me know when the meeting will be.

Thank you for your assistance and I look forward to hearing from you soon.

Sincerely,

**Your Name
Telephone Number**

Enclosure: (Enclose a copy of the notice)

Appendix B: Sample Grievance Letter

**Your Name
Address
City, State Zip**

Date

**Name of Person at CCB, Regional Center, or Service Agency
Designated to Receive Grievances
Name of CCB, Regional Center, or Service Agency
Address
City, State Zip**

Dear _____:

Please accept this letter as a grievance, in accordance with Developmental Disabilities Services' rules and regulations found at 2 C.C.R. 503-1, Rule 16.326.

I am filing this grievance because [describe the action or the failure to act that forms the basis for your grievance].

[Include the date or dates of the action, if possible; the name or names of the individuals involved; and any other necessary information. If you can, describe the action that you believe could resolve your grievance.]

Thank you for your assistance and I look forward to working with you to find a way to resolve my grievance.

Sincerely,

**Your Name
Telephone Number**

Enclosures: (Enclose copies of any relevant documents, including any relevant letters, notes or correspondence)